

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 0320482-CIV-MORENO

JACK KING, as Personal Representative of the
Estate of JESSICA KING, *et al.*,

Plaintiffs,

vs.

CESSNA AIRCRAFT CO., a Kansas corporation,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
IN PART, GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT, GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

THE MATTER was referred to the Honorable Edwin G. Torres, United States Magistrate Judge for a Report and Recommendation on Defendant's Motion for Summary Judgment (**D.E. No. 573**) and Plaintiff's Motion for Partial Summary Judgment (**D.E. No. 571**). The Magistrate Judge filed a Report and Recommendation (**D.E. No. 616**) on September 13, 2010. The Court has reviewed the entire file and record. The Court has made a *de novo* review of the issues that the objections to the Magistrate Judge's Report and Recommendation present, and being otherwise fully advised in the premises, it is

ADJUDGED that United States Magistrate Judge Edwin G. Torres's Report and Recommendation (**D.E. No. 616**) is **AFFIRMED** and **ADOPTED** in part. Accordingly, it is

ADJUDGED that:

(1) Defendant's Motion for Summary Judgment (**D.E. No. 573**) is **GRANTED** in part and **DENIED** in part as follows:

(a) Defendant's Motion for Summary Judgment against Plaintiff Jack King is **GRANTED**.

(b) Defendant's Motion for Summary Judgment against Plaintiffs Bonnie Ruby, Vanessa Stimmel, and Brian King based on statute of limitations is **DENIED**. These relatives may proceed to amend the Complaint to assert their claims directly against Defendant in their individual capacities.

(c) Defendant's Motion for Summary Judgment against Plaintiffs Bonnie Ruby, Vanessa Stimmel and Brian King on direct and vicarious liability negligence and ultra-hazardous activity claims based on insufficient evidence is **DENIED**.

(d) Defendant's Motion for Summary Judgment against Plaintiffs Bonnie Ruby, Vanessa Stimmel, and Brian King on vicarious liability claims based on Stefano Romanello's actions is **DENIED**.

(e) Defendant's Motion for Summary Judgment against Plaintiffs Bonnie Ruby, Vanessa Stimmel, and Brian King on all claims based on supervening causes and findings of the Italian court is **DENIED**.

(f) Defendant's Motion for Summary Judgment against Plaintiffs Bonnie Ruby, Vanessa Stimmel, and Brian King regarding "lost net accumulations" damages is **GRANTED**.

(g) Defendant's Motion for Summary Judgment against Plaintiffs Bonnie Ruby,

Vanessa Stimmel, and Brian King regarding direct (iure proprio) biological damages is **DENIED**. While Judge Torres recommended granting Defendant's Motion for Summary Judgment against Bonnie Ruby in this regard, this Court has considered her affidavit, submitted after Judge Torres issued his Report and Recommendations, and finds that the record suggests that an issue of material fact exists as to whether she suffered biological damages as a result of Jessica King's death.

(h) Defendant's Motion for Summary Judgment against Plaintiffs Bonnie Ruby, Vanessa Stimmel and Brian King regarding the right of inheritance (iure hereditatis) biological damages is **GRANTED**.

(2) Plaintiffs' Motion for Partial Summary Judgment (**D.E. No. 571**) is **GRANTED** in part and **DENIED** in part as follows:

(a) Plaintiffs' Motion for Summary Judgment on the issue of Cessna's demonstration flight as ultrahazardous activity is **DENIED**.

(b) Plaintiffs' Motion for Summary Judgment on the issue of Cessna as "contracting carrier" is **GRANTED**.

(c) Plaintiffs' Motion for Summary Judgment on the issue of fault apportion is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 14 day of December, 2010.


FEDERICO A. MORENO
CHIEF UNITED STATES DISTRICT JUDGE

Copies provided to:
United States Magistrate Judge Edwin G. Torres
Counsel of Record